

REMARKS

This responds to the Office Action dated June 9, 2004.

Claims 1-6, 12-20, and 24 were rejected.

Claims 10, 11 and 21-23 were allowed.

Claims 2-4 and 7-8 were objected to.

Claim 9 is cancelled.

Allowable Subject Matter.

Provisionally allowed dependent claim 2 has been rewritten in independent form as suggested by the Examiner. Therefore claim 2 and its dependant claims 3 and 4 should be in condition for allowance.

Provisionally allowed dependent claim 7 has been rewritten in independent form as suggested by the Examiner. Therefore claim 7 and its dependent claim 8 should be in condition for allowance.

Claims 10, 11 and 21-23 stand allowed.

Claim Objections

Claims 10 and 12 were objected to for informalities. The informalities have been corrected.

Claim Rejections – 35 USC § 102

Claims 1, 5, 6, 12, 13 and 24 were rejected under § 102(b) as being anticipated by U.S. Patent 4,709,448 to McGuire, et al.

McGuire, et al. was cited for the first time in the Final Action dated June 9, 2004.

McGuire, et al. does not show the principle of applicant's invention. It functions in a different way and does not provide the same results.

McGuire, et al. shows a rotary transfer apparatus that has a rotary member 20 (Fig. 1) that receives the birds on one side of the rotary member and carries them around to the other side of the rotary member. During this process, the orientation of the bird progressively changes so if the bird enters facing south, it exits facing north. The McGuire, et al. birds remain radially oriented with respect to the central shaft 25 as they pass around the transfer wheel. This is not the

principle of applicant's invention. In applicant's invention, if the bird enters the transfer wheel facing south, it exits the transfer wheel facing the same direction, south.

It appears that the examiner has cited McGuire, et al. because the breadth of the claims of the application might include the tilting concept shown in Figs. 6 and 7A of McGuire, et al., whereby the McGuire, et al. birds are tilted up and down about a horizontal axes for a completely different purpose, so that the hocks can be cut from the legs of the birds.

It appears that after a search for applicant's invention, including the rotation of the birds to enter the transfer wheel and discharge from the transfer wheel in the same attitude, McGuire, et al. was the closest prior art, but it relates to a totally different concept, of cutting hocks from the birds.

Independent claim 1 includes the following language:

--holder orientation means operatively associated with said transfer wheel *configured for rotating the carcass holders with respect to the transfer wheel and for equalizing the rotational orientation of the carcass holders from receipt of the carcasses on the transfer wheel to the discharge of the carcasses from the transfer wheel, the initial rotational orientation and the final rotational orientation of the carcasses being identical relative to the first overhead conveyor and to the second overhead conveyor.*

When reviewing McGuire, et al. it is apparent that McGuire, et al. does not equalize the rotational orientation of the carcass holders from receipt to discharge. This is evident upon reviewing any of the figures of McGuire, et al. that show more than one bird. For example, Fig. 3 shows seven birds and none of them have "the initial rotational orientation and the final rotational orientation of the carcasses being identical--." They all face in different directions as they rotate through the system and wind up being discharged in a rotational orientation that is different from entry rotational orientation.

It is acknowledged that McGuire, et al. tilts the birds as shown in Figs. 6 and 7A and that the tilting is down and then back up to the initial attitude; however, *this tilting arrangement of McGuire, et al. is about a horizontal axis* and does not satisfy the claim language and does not perform the same function as described in the specification and shown in the drawings of applicant's application.

Claim 2 has been rewritten to be in independent form, as suggested by the Examiner, so it and its dependent claims 3 and 4 should be in condition for allowance.

Dependent claim 5 adds to claim 1 the holders having the 1:1 relationship with respect to the rotation of the transfer wheel from receipt to discharge. This is not disclosed in McGuire, et al.

Claim 6 depends from claim 1 and includes limitations of the second orientation means for orienting others of the holders operated by the first orientation means. This is not disclosed or suggested in McGuire, et al.

Claim 7 has been rewritten to be in independent form, as suggested, and it and dependent claim 8 should be in condition for allowance.

Claim 12 has been amended as required by the Examiner and, in addition, the expression of the holders having an upwardly extending central shaft has been added. This emphasizes the direction of rotation of the holders, not about a horizontal axes as shown in McGuire, et al., but about the previously discussed and previously searched upwardly extending axes. This concept is found in provisionally allowed claim 3. This should cause claim 12 to be in condition for allowance.

Please note that claim 12 is amended only to distinguish over the horizontal axis of McGuire, et al. and McGuire, et al. was cited for the first time in the final action. The claim language of each holder having an upwardly extending central shaft about which it rotates is not taught in McGuire, et al.

Dependent claim 13 adds the orientation means being adapted for 1:1 continuous rotation of the holders with respect to the transfer wheel. Again, this is not shown by McGuire, et al.

Independent claim 24 has been amended to insert the upwardly extending axis of the bird holders. Again, this distinguishes over the late cited McGuire, et al. patent that was cited for the first time in the Final Action.

Claims 14-16 concern the shackle that carries the birds to the transfer wheel. Claims 14-16 were rejected under § 102(b) as being anticipated by U.S. Patent 5,514,033 to Berry. Berry discloses in Figs. 4C, 5A, 5B, 6A, 6B, and 7 his concept of orienting the legs of the bird as the legs pass through an open ended leg divider and restraint 19. As shown in Fig. 4C, the restraint device 19 is placed above the new, open fronted shackle 19' with the restraint device being

located in a stationary, horizontal orientation and with the shackle 19' moving beneath the restraint device so as to receive the legs of the bird.

Fig. 5A shows the restraint device. It is described in the specification as:

With reference to Fig. 4C, it will be appreciated that the restraint device 19 has been sectioned at a position upstream of shackle 19'. Clearly, the point when the bird is transferred from the restraint device to the shackle, the bird's legs will have been separated by device 19 so as to line up exactly with the gaps between the inner and outer leg restraints of the shackle.

In operation, when the birds' legs have been suitably separated and restrained by the array 23-27 as above described, the birds are pulled away from the open topped device [restraint device] by successive open-fronted shackles of the shackle line 20. Fig. 7 shows how the birds are then lifted up and around until they are hanging upside down ready for a subsequent stun and slaughter operation in the following section of the processing plant (not shown). (Col. 3, lines 22-29.)

Looking at Fig. 7, the shackle line 20 moves the shackles 19' beneath the restraint device 19 with both shackle and restraint device being oriented horizontally. Once the shackle grasps the legs of the bird, the shackle 19 tilts toward a vertical attitude and carries the birds away from the restraint device.

It should be noted that the shackle does not have open ended accommodation spaces as clearly shown in Fig. 6A. Indeed, if the accommodation spaces of the shackle were open ended, the birds would fall out of the shackles when the shackles become vertically oriented in the manner as shown in Fig. 7.

The Office Action refers to Berry as disclosing "a holder – at 19, 19', for suspended transport of poultry." However, It should be noted that 19' is a shackle, but 19 is the restraint device of Fig. 5A of Berry. The accommodation spaces identified in the Office Action as 24-27 are not the accommodation spaces of the shackle but of the restraint device. The accommodation spaces 24'-27' of the shackle of Fig. 6A are not open ended. They have only one open end as conventional shackles do. This is described in the Berry specification:

The structure of the open-fronted shackle 19' is best understood from Figs. 4C and 6 and comprises attachment member 23', inner leg restraints 24', 25', and outer leg restraints 26', 27'. *At its trailing end shackle 19' is completed by a downwardly-turned stop bar 28.* (Col. 3, lines 10-14)

Obviously the stop bar 28 shown in Fig. 6A clearly forms a dead end of the accommodation spaces of the Berry shackle.

Not only does the shackle of Berry not meet the claims of the application, it does not function the same way and does not provide the same result. Applicant's hanger 21 has open ended accommodation passages 31 that are endless so that the hock of a bird can be inserted from one side and discharged from the other side of the shackle. This cannot happen in Berry.

Independent claim 14 of the application describes the shackle:

A shackle for suspending a poultry carcass by its legs, the shackle defining a pair of open-ended accommodation spaces sized and shaped for receiving the legs of the carcass,

the distance between the accommodation spaces at their one end being different from the distance therebetween at the other end,

such that the legs of a carcass can be inserted into one end of the accommodation spaces, the carcass suspended by its legs from the holder and carried by the holder to another location, and the legs removed from the other end of the accommodation spaces.

Clearly, Berry does not describe a shackle constructed in this way, and his shackle does not work in the same way as applicant's shackle.

Dependent claim 15 adds to its parent claim the feature of the inclined turned in members being arranged on either side of one end of the accommodation spaces to prevent unintentional backward movement of the legs. By contrast, Berry teaches a shackle that has only one end open and there is nothing to prevent unintentional backward movement of the legs of the bird in the accommodation spaces of Berry.

Claim 16 includes the inclined turned in members arranged on either side of the one end of the accommodation spaces to prevent unintentional backward movements of the legs of the bird out of the one end of the accommodation spaces. Again, this is not disclosed by Berry. Indeed, Berry must remove the birds by backing the birds out of the same end in which they entered.

Claim Rejections – 35 U.S.C. § 103

Claims 17-20 were rejected under §103(a) as being unpatentable over McGuire, et al. as applied to the previous claims and further in view of European Patent 1,038,443 to Meyn. It is

indicated that McGuire, et al. does not disclose the holders being provided with accommodation spaces for the legs of the carcasses, and Meyn does disclose the spaces.

The combination of Meyn and McGuire, et al. do not meet the limitations of claim 1, in that McGuire, et al. does not teach the feature of rotating the carcass holders with respect to the transfer wheel for equalizing the rotational orientation of the carcass holders from receipt in to discharge from the transfer wheel. A review of Fig. 3 of McGuire, et al. emphasizes this, where several birds are shown and all of the birds are at different rotational orientations.

Compliance with 37 C.F.R. 1.116(b)

Rule 1.116(b) allows amendments to claims that present them in better form for consideration on appeal. Applicant has modified claims 10 and 12 so as to comply with the objections by the Examiner. Also, applicant has rewritten dependent claims 2-4 and 7-8 that were indicated as being allowable if rewritten. Accordingly, these claims should be in condition for allowance.

McGuire, et al. is newly applied prior art, that was first applied to the claims of the application in the Final Action. It is clear from the foregoing arguments that McGuire, et al. is not analogous prior art. McGuire, et al. does not show applicant's concept of equalizing the rotational orientation of the carcass holders from receipt in and discharge from the transfer wheel. McGuire, et al. simply does not disclose this. This limitation has been in the claims of the application long prior to the Final Action. It is not a new subject and has been fully argued and clearly presented before the Final Action. Clearly, McGuire, et al. has been applied erroneously to the claims.

With regard to the application of Berry, it is clear that the Examiner misconstrued Berry. The discussion in the Office Action of Berry clearly shows that the Examiner erroneously considered the restraining device 19 of Fig. 5A to be a shackle. It is clearly not a shackle and does not function as a shackle, but is only a stationary restraining device.


Pursuant to M.P.E.P. 706.07(a), final actions can be given except where the Examiner introduces a new ground of rejection that is not necessitated by applicant's amendment. Also, actions from the Patent Office will not be made final if they include a rejection based on newly cited art. It should be noted that *the feature provided by McGuire, et al. was present in the claims upon the filing of the Request for Continued Examination.* See the Amendment and Response filed on or about May 23, 2003.

Under the circumstances, applicant urgently requests that the claims of the application as presented herein be entered in the application and that the claims be allowed and that the application be passed to issue without delay.

In the event that there are any claim matters that should be discussed between the Examiner and the undersigned attorney, the Examiner is invited to call by telephone for such a discussion.

Favorable consideration of the application is courteously solicited.

Respectfully submitted,


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